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Mays Electric Co., Inc. and Mays Electrical Services Corporation and Vincent T. Mays and International Brotherhood of Electrical Workers, Local 666, AFL-CIO. Cases 5-CA-31247 and 5-CA-31371

April 10, 2008

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

The General Counsel seeks default judgment in this case on the ground that the Respondents have failed to file an answer to the compliance specification.

On September 30, 2004, the Board issued a Decision and Order¹ that, among other things, ordered Respondent Mays Electric Company, Inc. (MEC) to make whole discriminatee Allen Morgan for any loss of earnings or other benefits he may have suffered as a result of MEC's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act. On October 17, 2005, the United States Court of Appeals for the Fourth Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatee, the Regional Director issued a compliance specification and notice of hearing on December 7, 2007,³ alleging the amount of backpay due under the Board's Order, and notifying the Respondents that they should file an answer by December 28, 2007, complying with the Board's Rules and Regulations.

The compliance specification also alleges that at all material times and continuing until 2005, Respondent MEC, a corporation with an office and place of business in Lynchburg, Virginia, was engaged in the construction business as an electrical contractor; that since about January 23, 2003, and continuing to date, Respondent Mays Electrical Service Corporation (MESC), with an office and place of business in Lynchburg, Virginia, has been engaged in the construction business as an electrical contractor; that Respondent Vincent T. Mays (Mays) was the president of Respondent MEC, owned 100 percent of the stock in Respondent MEC, since January 23, 2003, served as the president of Respondent MESC, and is a supercent of the stock in Respondent MESC, and is a su-

pervisor and an agent within the meaning of Section 2(11) and (13) of Respondent MEC and Respondent MESC; that Respondent Mays made all business and major construction decisions for Respondent MEC and Respondent MESC, including but not limited to all final bid submissions, including determining whether Respondent MEC or Respondent MESC would bid new work and perform work on successful bids; that Respondent Mays controlled the day-to-day management, labor relations policies, and financial resources of Respondent MEC and Respondent MESC; and that since late 2003, Respondent Mays has diverted the assets of Respondent MEC for his own use, by using the assets of Respondent MEC for the purposes of satisfying the terms of a settlement in a court proceeding involving a personal matter, and in an effort to render Respondent MEC insolvent and to make it incapable of fulfilling its obligations, Respondent Mays directed the purchase of a property through English Tavern Development, a company wholly owned by Respondent Mays and engaged in a business unrelated to electrical contracting, at an artificially low price and later selling it for personal gain at a profit. Based on the conduct described above, the compliance specification alleges that Respondent Mays individually acted as an alter ego of Respondent MEC and of Respondent MESC, and thereby is personally liable, jointly and severally, with Respondent MEC and Respondent MESC for remedying the unfair labor practices of Respondent MEC.

The compliance specification further alleges that about June 2003, Respondent MESC began acting as a single, integrated enterprise with Respondent MEC; that since about January 2003 and continuing to 2005, Respondent MESC maintained the same business address, business telephone, cell phone accounts, website address, and goodwill as Respondent MEC; that from 2003 to 2004, Respondent MESC regularly paid only nominal rental fees to Respondent MEC for office space, vehicle, and equipment use; that around April 2004 and continuing until 2004, Respondent MEC paid construction equipment, office equipment, office furniture, and vehicle expenses on behalf of Respondent MESC to English Tavern Development; that at all material times, Robin E. Mays was the vice president of Respondent MEC and since about January 23, 2003, has been the vice president of Respondent MESC, and at all material times has been a supervisor and an agent within the meaning of Section 2(11) and (13) of the Act of Respondent MEC and Respondent MESC.

The compliance specification additionally alleges that beginning about June 2003 and continuing to 2005, Respondent MESC employed the same employees and supervisors as Respondent MEC; that certain employees

¹ 343 NLRB No. 20.

² No. 05–1862.

³ The compliance specification initially issued on November 30, 2007, but was inadvertently sent to the wrong address. Consequently, the Regional Director reissued the compliance specification on December 7.

performed work on Respondent MEC's jobsites and were compensated by Respondent MEC during the same pay period(s) that they performed work on Respondent MESC's jobsites and were compensated by Respondent MESC; that employees of Respondent MEC and Respondent MESC were paid identical individual hourly wage rates and received identical individual benefits when performing work for Respondent MEC or for Respondent MESC; that all terms and conditions were the same, regardless of whether employees were performing work for Respondent MEC or Respondent MESC; that Respondent MEC and Respondent MESC maintained the same workers compensation insurance policy; that Respondent MESC has advertised itself as a continuation of Respondent MEC, including by promoting the trade experience gained by Respondent MEC, and using the substantially same corporate logo as Respondent MEC; that beginning in January 2003 and continuing to about April 2004, Respondent MESC established credit with, and procured supplies from, many of the same suppliers used by Respondent MEC; that in establishing credit, Respondent MESC relied on the goodwill earned by Respondent MEC; that beginning about June 2003 and continuing to 2005, Respondent MEC and Respondent MESC performed work for the same customers; and that beginning in July 2003 and continuing until at least April 2005, checks from customers made payable to Respondent MEC were deposited directly into an account held by Respondent MESC. Based on the conduct described above, that compliance specification alleges that Respondent MEC and Respondent MESC are a single, integrated enterprise.

Further, the compliance specification alleges that at all material times, Respondent MEC and Respondent MESC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises; and that based on the operations described above, Respondent MEC and Respondent MESC have been the single employer of the employees of Respondent MEC.

Although properly served with a copy of the compliance specification, the Respondents failed to file an answer.⁴

On February 11, 2008, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On February 15, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents failed to file a response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

Ruling on the Motion for Summary Judgment⁵

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations provides that if the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the compliance

which contained a copy of the compliance specification and a letter advising him that a Motion for Default Judgment would be filed if he failed to file an answer to the compliance specification by the close of business on January 4, 2008. Two envelopes were mailed to Mays' home address and two envelopes to MESC's address—one mailed to each address contained the return address of the Region, and one did not. On December 20 and 26, 2007, the envelopes with the Region's return address were returned to the Regional office marked "return to sender"; however, there is no evidence that the unmarked envelopes were returned.

In addition, copies of the Notice to Show Cause were sent to the Respondent by certified and regular mail on February 15, 2008. The letter sent by regular mail was returned on March 3, 2008, and the certified letter was returned on March 6, 2008. Both were marked "return to sender." Subsequently, an additional copy of the Notice to Show Cause was sent by regular mail on March 6, 2008, and it was returned on March 18, 2008, and marked "return to sender."

It is well-settled that a party's failure to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003). Accordingly, we find that the Respondents were properly served with the compliance specification.

⁵ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

⁴ As stated above, copies of the compliance specification were sent by certified mail on December 7, 2007. On December 11, having learned that MEC refused delivery of the December 7 mailing, the Regional Attorney sent four envelopes to Mays by regular mail, each of

specification to be admitted as true, ⁶ and grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that (1) the net backpay due the discriminatee is as stated in the compliance specification; (2) MEC and MESC are a single employer as alleged, and as such are joint and severally liable for the amount due the discriminatee under the Board's Order; and (3) Mays is the alter ego of MEC and MESC, and as such is personally liable, jointly and severally with MEC and MESC, for the amount due the discriminatee. We will therefore order the Respondents to pay that amount to Allen Morgan, plus interest accrued to the date of payment. ⁷

ORDER

The National Labor Relations Board orders that the Respondents, Mays Electric Co., Inc., and Mays Electri-

cal Services Corporation, Lynchburg, Virginia, their officers, agents, successors, and assigns, and Vincent T. Mays, an individual, shall jointly and severally make Allen Morgan whole by paying him the amount following his name, plus additional net backpay and interest which may accrue in the absence of a valid offer of reinstatement, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

Allen Morgan \$7,170.26 TOTAL BACKPAY DUE: \$7,170.26

Dated, Washington, D.C. April 10, 2008

Peter C. Schaumber, Chairman
Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁶ We note and correct two mathematical errors in the General Counsel's Exhibit C. First, the correct amount of net backpay owed the discriminatee is \$7,170.27, not \$7,170.26. Second, we note that the amount of interim earnings in column 7 should be \$170,107.51, not \$95,039.70; however, the change in this total does not affect the amount of backpay owed.

⁷ In the compliance specification, the General Counsel seeks compound interest computed on a quarterly basis for any monetary amounts owing to the discriminatee. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Rogers Corp.*, 344 NLRB 504 (2005).